Supreme Court, U.S.
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No. 97-671

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

CARABELLO, FRANK Petitioner

V

CARABELLO, SHARON, ET AL. Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

SUPPLEMENTAL BRIEF OF PETITIONER ON INTERVENING CONTEMPT ACTION

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QUESTIONS PRESENTED FOR REVIEW

DOES REDRESS EXIST FOR INJURY FROM JUDICIAL ACTS THAT OVERRIDE SECURED RIGHTS, AND WHERE THE INJURY IS READY TO EXPAND ON INTERVENING CONTEMPT ACTION, WHAT REDRESS IS PROPER.

IS JUDICIAL CONSTRUING, BY A STATE TRIAL COURT, A SUPREME AND UNCHANGEABLE EDICT, SUPERIOR TO FOURTEENTH AMENDMENT RIGHTS, WHERE IRREVOCABLE DEPRIVATION OF SECURED RIGHTS IS PLAIN.

HAVE STATE JUDICIARY ACTED OUTSIDE JURISDICTION OR DUTY IN A CASE WHERE FOURTEENTH AMENDMENT RIGHTS HAVE BEEN IRREVOCABLY AND WILLFULLY DEPRIVED.

WHERE A STATE TRIAL COURT HAS DENIED EQUAL PROTECTION OR DUE PROCESS, DOES APPELLATE COURT DUTY REQUIRE AT LEAST INQUIRY INTO RECORDS ALLEGED TO SHOW OBSTRUCTION, IF EQUITY DISTRIBUTION (ON THE FACE OF ORDERS APPEALED) MANIFESTLY HAS OVERRIDDEN LEGAL CLAIMS AND VESTED RIGHTS.

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I. INTERVENING CONTEMPT ACTION UNDERSCORES THAT RIGHTS CAN BE HAD IF, AND ONLY IF, PETITION FOR WRIT OF CERTIORARI IS GRANTED.

Albeit granting Petition for Writ of Certiorari in this Court is a privilege, the characteristics in this case invite that action, because great and immediate irreparable harm is manifest (Younger v Harris, (1971) 401 US 37 at 46). The Kentucky courts have applied rules and laws in a manner that has irrevocably deprived Fourteenth Amendment rights and obstructed legal claims. This caused the intervening circumstances that now put Petitioner at risk of losing liberty. The action in Kentucky should not be permitted to continue its present course. That course has denied remedies (irrespective of the merits) and used equity issues to obstruct resolution of legal claims. Contempt action based on equity division (hereafter ED) is now before the Kentucky Boone Circuit Court (hereafter trial court). A contempt order will defeat resolution of Petitioner's legal claims and rights without any possibility of a proper court ever reaching the merits. It is manifest that the trial court proceeding have deprived due process and equal protection.

The trial court willfully withheld access to injury issues from July 19, 1994 forward. On July 12, 1996, it remanded these to its docket, while exercising its powers of final ED. This was irrespective of losses caused by injury. This created orders that can not be complied with and is an unconstitutional, irrevocable deprivation of vested rights. Appeal of this was denied February 11, 1997. State discretionary review was denied on August 27, 1997. After serving the Petition for Writ of Certiorari in this case, Respondents retaliated with contempt charges against Petitioner, using the ED orders previously appealed in Kentucky as grounds. The contempt action has been set for hearing in the trial court on December 9, 1997. Because Petitioner's injury and abuse at the hands of the trial court has deprived livelihood, he has no means to comply with its orders. The contempt action puts Petitioner's liberty at risk, and imposes immediate risk of

further irreparable harm. Petitioner asserts that the prior abuse has given him cause to fear the trial court, that he lives in constant fear, and that he can not return to that court. Moreover, he can not travel within its jurisdiction, which prevents access to the federal district court where his legal claims now must be resolved.

Petitioner's legal claims can not be properly resolved if the trial court retains jurisdiction. This is manifest from the obstruction of injury issues from July 19, 1994 forward. Resolution of legal claims was willfully obstructed and his injury has progressed on remedies withheld. The trial court did not retain the powers of remedy. It allowed the injury to expand beyond these powers, by delaying resolution of legal claims. Although contempt for non-compliance with ED now is all that concerns the trial court, due process can not be had, unless the obstruction of legal claims is resolved first. FRCP 18(b)/KRCP 18.02.

Procedural due process is meant to protect persons from mistaken or unjustified deprivation of life, liberty or property, Carey v. Piphus (1978) 435 US 247. State can not deny due process or engage in invidious discrimination, Douglas v California (1993) 372 US 353. It is established that due process can be deprived in the course of construing otherwise valid state statute, Bouie v Columbia (1964) 378 US 347. The situation in this case is that the state courts denied due process, and divided equity irrespective of injury. The fact of this miscarriage of justice is plain. This has been raised, preserved, and passed on by the Supreme Court of Kentucky. Petitioner has exhausted his state court remedies.

Proceedings in the trial court now serve no legitimate purpose, because that Court retained jurisdiction without retaining powers of remedy. ED has been resolved there and the only issues that remain involve obstruction and legal claims. The trial court has neither the resolve nor the ability to adjudicate these. It can only use the jurisdiction it retained to cause further injury and deprivation. If there is anything the

trial court can do with its powers at this late date, it is that and only that.

The rules and laws abused by the trial court are involved in numerous cases annually. Abuse of these has irrevocably deprived vested rights. If Petition is not granted, the Kentucky courts would be advised that the public has no adequate redress for judicial acts repugnant to the Fourteenth Amendment.

Such an advisory would strip that Amendment of all meaning where ED willfully is adjudicated in a manner to override legal claims arising from abuse during state proceedings. The contempt action of the Respondents in this case emphasizes the need for action in this Court. This case involves application of the enormous powers of state court to defeat a citizen with no powers, other than rights vested by The Constitution. The public should be able to depend on federal redress, when state courts deny vested rights. These are said to be available to all citizens. Petitioner prays that these will be made available to him in this case. The prevailing standards seem to be the doing of justice and the will of the law. Certiorari is the only means to reach those standards in this case.

Petitioner asserts that granting the Petition in this Court is the only way due consideration will be given to the duty withheld in Kentucky. The quote of Chief Justice Marshall, in Littleton v. Berbling (7th Cir. 1972) 468 F 2d 389 at 412, puts duty as follows:

> "Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the *duty* of the court to follow it. Judicial power is never exercised for the purpose of giving the will of the judge; always for the purpose of giving the will of the legislature; or, in other words, to the will of the law."

Petitioner has phrased the questions originally presented in accordance with the intervening contempt action. He presents the standards involved as follows.

II. ADEQUATE REDRESS EXISTS FOR INJURIOUS JUDICIAL ACTS THAT OVERRIDE RIGHTS SECURED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, IF AND ONLY IF, FEDERAL INTERVENTION IS MADE AVAILABLE.

The Fourteenth Amendment of the United States Constitution guarantees state judicial acts will not override secured rights. Remedy for deprivation of these rights lies with the state courts only to the extent that these courts act timely and in accordance with the law. If redress by state courts has been exhausted and these fail duty to retain power of remedy, then judicial inquiry by federal court(s) is the only adequate redress available.

III. JUDICIAL CONSTRUING IN A STATE TRIAL COURT IS NOT A SUPREME AND UNCHANGEABLE EDICT, SUPERIOR TO FOURTEENTH AMENDMENT RIGHTS; — WHERE DEPRIVATION OF RIGHTS IS PLAIN, FEDERAL INTERVENTION IS APPROPRIATE.

In a state civil case, where rules of procedure and laws are willfully applied to obstruct legal claims—and override all conflicting rights of property, due process and equal protection—there exists judicial deprivation of vested rights, under color of law. Judicial duty is to the will of the law and willful disregard thereof can never be applied as a supreme and unchangeable edict, superior to Fourteenth Amendment rights. But, that has been done in Kentucky. Thus, it would appear that the intervening contempt action is a willful attempt to retaliate for Petitioner's efforts to seek justice in federal court.

IV. STATE JUDICIARY ACT OUTSIDE JURISDICTION OR DUTY IN A CASE WHERE FOURTEENTH AMENDMENT RIGHTS ARE IRREVOCABLY AND WILLFULLY DEPRIVED.

In a divorce case where legal claims arise from loss of business, and injury therefrom substantially devalues equity before division thereof, state judiciary act outside jurisdiction and duty and irrevocably deprive Fourteenth amendment rights—if (a.) non-cognizable equity issues are willfully used to obstruct legal claims, (b.) counsel and judiciary willfully act together to obstruct the will the law, or conspire to deprive redress for legal claims and shield tortfeasors, or if (c.) orders not reciting (form FRCP 54(b)/KRCP 54.02) final language, divide and distribute equity remains, remand legal claims, and rule res judicata on the acts of tortfeasors. All the aforementioned acts took place in the trial court and further injustice appears to be the sole basis for the contempt action pending there.

V. APPELLATE STATE COURTS WITHHOLD DUTY AND DENY EQUAL PROTECTION OR DUE PROCESS, WHERE THERE IS NO INQUIRY INTO RECORDS ALLEGED TO SHOW OBSTRUCTION, IN A CASE WHERE EQUITY DISTRIBUTION (ON THE FACE OF ORDERS APPEALED) MANIFESTLY HAS OVERRIDDEN LEGAL CLAIMS AND VESTED RIGHTS.

State appellate duty requires at least inquiry into records involving obstruction, especially where equity distribution (on the face of orders appealed) manifestly has overridden legal claims and rights to due process and equal protection. An appellate state court withholds duty, denies equal protection and due process, and obstructs redress, where appeal is dismissed irrespective of the merits, especially, where orders evidence trial court abuse, obstruction and deprivation of rights on the face. Upon such evidence, an appellate state court must review merits for interlocutory relief and appeal,

and must override trial court's remand of legal claims and withholding of (FRCP 54(b)/KRCP 54.02) language. Thus, the state appellate courts did not act on the evidence or the issues presented, as required by duty.

No legitimate construing of rights and laws can justify the Kentucky court orders. The disregard of duty is plain from the record in this case. State appeal, although the preferred method of remedy, provides no means for relief because it has been repeatedly denied in the past, irrespective of the merits. From 1994 forward, Petitioner has challenged the trial court's obstruction. He has been discriminated against because of his challenges on deprived due process and equal protection. His non-marital property was seized without the granting of a hearing and his property then was released to his former wife about two years later. The acts taken by Kentucky judiciary are individual, not the will of the law. The involved judiciary willfully disregarded their official character and have overridden the superior authority of The United States Constitution and rights secured by the Fourteenth Amendment.

The contempt action shows that Respondents treat the law as if it were irrelevant, because there is no law on which to base contempt for non-compliance (with ED orders), where the inability to comply and pay a party is due to the destruction caused by that party. Respondents all were fully advised in 1994-5 of the destruction of Petitioner's livelihood and the cause, and their contempt action interferes with Petitioner's attempts at resolution in federal court. Justice can not be assured without granting the relief requested herein.

CONCLUSION

This case presents serious due process and equal protection issues concerning rules of civil procedure and laws that are invoked in numerous cases annually. Petitioner respectfully requests this Court to grant Certiorari to review the issues, and to invite Respondents to show cause for pursuing any further action in the trial court, be it for contempt or for unresolved legal claims or for equity division.

This brief respectfully submitted the 2nd day of December, 1997, By:

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CERTIFICATION

I, Frank B. Carabello, hereby certify that the foregoing SUPPLEMENTAL BRIEF ON INTERVENING CONTEMPT ACTION is presented in good faith and not for delay, and declare under penalty of perjury that this is true and correct as I verily believe.

Frank B. Carabello

FRANK B. CARABELLO